IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 444 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SHAILESH PRABHASHANKAR DAVE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 444 of 1992
MR UA TRIVEDI for Petitioner No. 1
MR KG SHETH, APP for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 30/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. In this appeal, which is filed under Section 374 (2) of the Code of Criminal Procedure, 1973, the appellant has challenged legality of judgment dated March 31, 1992 rendered by the Learned Addl. Sessions Judge, Ahmedabad (Rural) at Mirzapur in Sessions Case No. 120/1991, by which he is convicted under Section 302 of the Indian Penal Code and sentenced to rigorous imprisonment for life.

2. Deceased Kantibhai Bhagvatbhai Patel was resident of village Nidhrad, Taluka Sanand, District Ahmedabad. In Dabhi Vas of village Nidhrad he was running a grocery shop with his brother Mukeshkumar Bhagvatbhai. Both the brothers used to open the shop at about 7.00 a.m. in the morning and close the same at about 8.00 p.m. The incident in question took place on May 29, 1991. In the morning the brothers had opened the shop and were doing business. At about 7.30 a.m. in the morning the appellant who is also resident of village Nidhrad came with a knife in his hand and asked deceased Kantibhai as to why he had beaten him on the previous night. According to the prosecution thereafter the appellant caused injury on left side of chest of deceased with knife and inflicted another blow on the back side of shoulder of left side of the deceased, whereas he inflicted third blow on left side of the deceased as well as fourth blow below left shoulder. Because of this commotion had taken place and Bhikhaji Chhanaji Thakor, Gafurbhai Rabari, Bhalaji Valaji and Prahladji Valaji, all residents of village Nidhrad, who had gathered in the chowk near the shop of the deceased, had rushed towards the shop. The prosecution case is that the appellant was caught red handed near the shop and locked in the shop by abovenamed persons. Meanwhile, on learning about the incident, father of the deceased and his uncle had come to the shop and as deceased had sustained serious injuries, he was removed to Sanand Government dispensary in a rickshaw. At Sanand Government dispensary doctor was not available and therefore they had attempted to remove injured Kantibhai to Vadilal Hospital at Ahmedabad in an ambassador car, but on way the deceased had expired. Therefore, they had returned with the dead body and gone to Sanand Police Station. While the deceased was being removed to Vadilal Hospital, Ahmedabad, the brother of the deceased who was running shop with him i.e. Mukeshbhai, had gone to Sanand Police Station for lodging complaint but before the complaint could be lodged, the father of the deceased and others had brought dead body of the deceased at Sanand Police Station and therefore, Mukeshbhai had filed complaint regarding

murder of his brother by the appellant at Sanand Police Station which was registered as I C.R. No. 127/1991 for the offence punishable under Section 302 of the Indian Penal Code and section 135 of the Bombay Police Act. On May 29, 1991 Mr. Uday Malvi was Police Inspector of Sanand Police Station and at his instance first information report was registered by Police Officer incharge of the Sanand Police Station. The Police Inspector had held inquest on the dead body at Sanand community health centre in presence of Panch witnesses. With reference to one bail application the Police Inspector was required to attend Mirzapur Sessions Court and, therefore, he had instructed Police Sub Inspector Mr. Pathan to undertake further investigation of the case. After completing Court work Mr. Malavi had come to village Nidhrad at about 6.00 p.m. and recorded statements of witnesses who were found conversant with the incident in question. As Mr. Malavi had to go to Sessions Court at Mirzapur with reference to hearing of a bail application and as he had instructed P.S.I. Mr. Pathan to undertake investigation, Mr. Pathan had arrested the appellant from the shop and prepared arrest Panchnama in the presence of panch witnesses. The blood stained shirt put on by the appellant as well as blood stained knife were attached by the Investigating Officer. The incriminating articles were sent to forensic science laboratory for analysis. After receipt of report from forensic science laboratory and on conclusion of investigation, the appellant was chargesheeted for the offences punishable under Section 302 of the Indian Penal Code and section 135 of the Bombay Police Act. As the offence punishable under Section 302 of the Indian Penal Code is exclusively triable by Court of Sessions, the case was committed to Sessions Court Mirzapur, Ahmedabad for trial, where it was numbered as Sessions Case No. 120/1991.

3. The learned Judge had framed charge at Exh.5 against the appellant for the offences punishable under Section 302 of the Indian Penal Code and section 135 of the Bombay Police Act. The charge was read over and explained to the appellant, who pleaded not guilty to the same and claimed to be tried. The prosecution therefore, examined (1) Mukeshbhai Bhagvatbhai, P.W. 1 Exh.8, (2) Kanaiyalal Manilal Barot P.W. 2 Exh. 10, (3) Dr. Samdarsinh Bhardwaj P.W.3 Exh.15, (4) Patel Govindbhai Laxmichand P.W. 4 Exh. 18, (5) Bhikhaji Chhanaji P.W.5 Exh. 21, (6) Gafurbhai Valajibhai Rabari P.W.6 Exh.22, (7) Bhagvatbhai Haribhai Patel P.W. 7 Exh. 24, (8) Uday Narendra Malavi P.W. 8 Exh.25 and (9) Ayubkhan Yakubkhan Pathan P.W. 9 Exh. 31 to prove its case against the

appellant. The prosecution also produced documentary evidence such as complaint filed by witness Mukeshkumar, post mortem notes prepared by doctor Bhardwaj, different panchnamas, report of the forensic science laboratory, etc. in support of its case against the appellant. After recording of evidence of prosecution witnesses was over, the learned Judge explained to the appellant incriminating circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement as required by Section 313 of the Code of Criminal Procedure, 1973. The appellant in his further statement claimed that the case of the prosecution against him was false, but did not examine any witness in support of his defence.

4. On appreciation of evidence adduced by the prosecution, the learned Judge held that it was proved by the prosecution that the deceased had died a homicidal death. The learned Judge after referring to the evidence of 3 eye witnesses, namely Mukeshkumar Bhagvatbhai, Bhikhaji Chhanaji as well as Gafurbhai Rabari held that their evidence was reliable and that it was proved by the prosecution beyond reasonable doubt that the appellant had caused murder of the deceased by inflicting knife blows. The learned Judge also referred to the medical evidence on record and deduced that the eye witness account was fully corroborated by the medical evidence on record. In view of the above referred to conclusions, the learned Addl. Sessions Judge, Ahmedabad (Rural) Mirzapur vide judgment dated March 31, 1992 convicted the appellant under Section 302 of the Indian Penal Code and has sentenced him to undergo rigorous imprisonment for life giving rise to the present appeal.

5. Mr. U.A. Trivedi, learned counsel for the appellant submitted that the evidence of complainant Mukeshkumar Bhagvatbhai is thoroughly unreliable because in his complaint he has specifically stated that the incident in question had happened in the shop itself; whereas in his substantive evidence before the Court he has stated that his brother was dragged by the appellant towards chowk and the fourth blow on the left side of the chest was given by the appellant outside the shop and, therefore in view of the material improvement made by him, he should have been disbelieved by the learned Judge. According to the learned counsel, the conduct of witness Mukeshkumar who is real brother of the deceased, was most unnatural in as much as he had neither raised shouts nor made any attempt to save his brother while blows were being inflicted and therefore, in view of this unnatural conduct his testimony deserves to be discarded.

What was claimed was that because of the incident which had taken place on the previous night witness Mukeshkumar and others were bearing grudge against the appellant and therefore, Mukeshkumar had filed a false complaint against the appellant. After referring to the evidence of eye witness Bhikhaji Chhanaji, the learned counsel submitted that in fact his evidence does not show that he had seen the appellant going into the shop of deceased with knife and his testimony which is full of improbabilities should be disbelieved by the Court. What was emphasized by the learned counsel for the appellant was that if the incident had taken place as narrated by the witnesses, blood stains would have been found from the shop as well as outside the shop also, but as no attempt was made to collect any blood sample from the shop, a doubt arises as to whether in fact the incident in question had taken place in the shop of the deceased or not and as there arises a reasonable doubt, benefit of the same should be given to the appellant. The learned counsel also referred to the evidence of the Investigating Officers and submitted that the investigation being dishonest, the appellant should be acquitted. Learned counsel for the appellant further pleaded that the accused was arrested after four hours from the shop and it is improbable that he would be holding the knife for all the while and therefore arrest panchnama also being doubtful, should be discarded by the Court. The learned counsel emphasized that no attempt was made by the Investigating Officer to ascertain whether Chappals which were found near the blood pool in the chowk belonged to the appellant or not and, therefore having regard to the totality of the circumstances and facts of the case, non-explanation by the appellant about blood stains having same group as that of the deceased his on shirt should not be given undue importance. The learned counsel claimed that the incident in question was not witnessed by any one and as the appellant is falsely implicated, atleast benefit of doubt should be given to him and the appeal should be allowed.

6. Mr. K.G. Sheth, Ld. APP contended that the evidence of eye witnesses is reliable as well as truthful and therefore no error can be said to have been committed by the Ld. Addl. Sessions Judge in placing reliance on their evidence for the purpose of convicting the appellant under Section 302 of the Indian Penal Code. The Ld. APP submitted that the appellant was caught red handed by some of the prosecution witnesses and others from the spot and locked in the shop from where he was arrested by the Investigating Officer, regarding which Panchnama was drawn in the presence of independent

witnesses and therefore this fact itself belies the claim of the appellant that he was falsely implicated in this case. What was stressed was that Mukeshbhai who is the younger brother of the deceased would not allow the real culprit to go scot-free and would not involve the appellant falsely more particularly when the record of the case does not indicate that he had any enmity with the appellant and therefore the substantial evidence of witness Mukeshkumar tendered before the Court should be accepted by the Court. According to the learned counsel for the State, evidence of witnesses cannot be discarded on the ground that they did not react in a particular manner and, therefore eye witnesses examined by the prosecution should be believed by the Court. The Ld. APP lastly submitted that no ground is made out by the appellant to interfere with the judgment impugned in the appeal and therefore the appeal should be dismissed.

7. We have heard the learned counsel for the parties at length and reappreciated the whole evidence on record. The fact that deceased Kantibhai died a homicidal death is not in dispute. The learned Judge has given cogent and convincing reasons for the purpose of coming to the conclusion that it was proved by the prosecution that the deceased had died a homicidal death. The reasons given by the learned Judge are to be found in paras. 9 and 10 of the impugned judgment. In the inquest report the injuries sustained by the deceased are mentioned in detail. Further the injuries which were found on autopsy of the dead body are mentioned in the post morten notes prepared by the Dr. Bhardwaj. Dr. Bhardwaj has also referred to the injuries which were found by him on examination of dead body of deceased Kantibhai in his substantive evidence before the Court. Thus, the fact that deceased had died a homicidal death is amply proved by the prosecution and the finding recorded by the learned Judge on this point being eminently just, is hereby upheld. The evidence of Mukeshkumar Bhagvatbhai P.W. 1 Exh.8 indicates that he had gone to the shop situated at village Nidhrad alongwith his deceased brother on May 29, 1991 at about 7.00 a.m. and after opening the same, they were doing the business. According to this witness, his brother was sitting on the counter of the shop and at that time the appellant had entered the shop with a knife and asked his brother as to why he was beaten by him on previous night. The witness informed the Court that the appellant had given one blow with knife on left side of the back waist, whereas another blow was given on the left side and as he had raised shouts, the appellant had started dragging his brother outside the shop. According to this witness, his

deceased brother had made attempt to get himself released from the clutches of the appellant, but could not succeed and that the appellant had inflicted fourth blow on left side chest before which two blows on the back were already inflicted by the appellant. The witness firmly stated before the Court that the appellant had inflicted inall four blows and meanwhile Gafurbhai Rabari, Bhikhaji Chhanaji, Prahladji Valaji and Bhalaji Valaji had come and had caught the appellant with knife on the spot. According to witness Mukeshkumar thereafter the abovenamed persons had locked the appellant in the shop itself and on arrival of his father and others his brother was removed in a rickshaw to Sanand Dispensary, but as the doctor was not available, an attempt was made to remove the deceased to Vadilal Hospital, Ahmedabad and on way his brother had expired. The witness has also referred to the fact that he had lodged complaint with the Sanand Police Station. In cross-examination the witness mentioned that the shop was situated at a distance of 300 to 400 steps from his residence and the house of Bhikhaji Chhanaji is situated just adjoining his shop. The witness admitted that he was not present when altercation between his deceased brother and appellant had taken place on the previous night and when his deceased brother had beaten the appellant, but informed the Court that he had learnt about the same on necessary information being conveyed by the deceased to him and other members of his family. The witness admitted that he had not mentioned in his complaint that his deceased brother was clinging to the appellant when he was being dragged by the appellant by hair. The witness also stated in his cross-examination that his brother must have been dragged 8 to 10 ft. The witness admitted that he had not made any attempt to save his brother nor he had attempted to run away from the shop. According to this witness, at the time when the incident had taken place, witnesses Gafurbhai Rabari, Bhikhaji Chhanaji and others were sitting on the Ota of temple and, therefore, they had rushed towards the shop as distance between the Ota and shop is 15 ft. From the evidence of this witness, it is evident that other minor contradictions were brought on the record of the case with reference to his complaint which are to be found in para.22 of his deposition. The witness denied the suggestion that the incident had not taken place in his shop and that the incident had taken place on way to village opposite his shop. The witness also denied the suggestion that his brother was assaulted by unknown persons on way to village and that the appellant was not armed with a knife at the time of incident. It is true that in the complaint this witness has stated that the incident had

taken place in the shop itself and has not referred to the fact that his brother was dragged by the appellant out of shop and that thereafter knife blow on the left side chest of his brother was given by the appellant. However, we find that in the panchnama of place of occurrence which is produced on the record of the case at Exh.11 it is specifically mentioned that blood stains were found in the shop this fact is mentioned in the Panchnama itself. Further the evidence of Investigating Officer Ayubkhan Pathan P.W.9 Exh. 31 makes it evident that he had noticed blood stains in the shop but samples were not collected by him because it was not possible to take the sample. This is so stated by the said witness in an answer to question put by the Court. Therefore, it is wrong to contend that incident had not taken place in the shop itself. Merely because the complainant had omitted to state in his complaint that his brother was dragged from the shop and taken towards chowk, his evidence does not become of doubtful character. It is to be noticed that after the incident, the deceased was removed to Sanand Dispensary immediately, but as doctor was not available, the father of the deceased and others had made an attempt to remove the deceased to Vadilal Hospital; whereas Mukeshkumar, who is real brother of the deceased, had gone to Sanand Police Station and lodged forthwith his complaint at about 9.30 a.m. The record of the case indicates that without any delay and without any deliberations the complaint was lodged forthwith. The record of the case does not show that there is any enmity between complainant Mukeshkumar and the appellant and, therefore, there was no earthly reason for Mukeshkumar to implicate the appellant falsely in such a serious case. He being the real brother of the deceased, would not allow the real culprit to go scot-free. Under the circumstances, though we find that there is some improvement made by the witness in his testimony before the Court, we are not inclined to discard his whole evidence as unreliable.

8. The evidence of eye witness Bhikhaji Chhanaji indicates that he is resident of village Nidhrad and his house is situated just adjoining the shop of the deceased. His evidence further shows that he had rented the premises to the deceased wherein the deceased was running a grocery shop. According to this witness, he had seen the appellant inflicting blow with knife on left side of chest of deceased and that the deceased as well as his brother had raised shouts. The witness has firmly stated before the Court that the appellant had made an attempt to run away but he, Gafurbhai Rabari, Bhalaji Valaji and Prahladji Valaji had caught the appellant with

blood stained knife and locked him in the shop. This witness has also stated that on learning about the incident, the father of the deceased had come to the spot and had removed the deceased in a rickshaw to hospital. In his cross-examination the witness denied that he had not stated in his police statement that the appellant had a blood stained knife in his hand. The witness also denied that he had not stated in his police statement that he and his deceased brother Kantibhai had raised shouts and that as deceased had caught hold of collar of shirt of the appellant, he was dragged 15 ft. The witness informed the Court that his statement was recorded on the same day between 4 to 5 p.m. at Panchayat office of the village and that though he was knowing that police had come to his village in the afternoon, he had not volunteered to inform the police about the incident. The witness denied the suggestion made by the defence that he had not seen the appellant inflicting blow on chest of the deceased. From the analysis of evidence of this witness, it becomes evident that this witness is neither related to the deceased nor on enimical terms with the appellant. It was not even suggested to this witness that the appellant was falsely implicated by him for any reason. The statement made by this witness to the effect that he, Gafurbhai Rabari, Bhalaji Valaji and Prahladji Valaji had apprehended the appellant with blood stained knife on the spot has totally gone unchallenged. Merely because he was landlord of the premises in which the deceased was running a grocery shop, one cannot jump to the conclusion that the evidence tendered by this witness on oath before the Court is tainted one or impartial. On overall view of the evidence of this witness, we are satisfied that he is a witness of truth and the learned Judge did not commit any error in placing reliance on his deposition for convicting the appellant.

9. The evidence of Gafurbhai Rabari P.W. 6 Exh. 22 shows that he is also resident of village Nidhrad and is cultivating field. According to him, the incident had taken place between 7.15 to 7.30 a.m. on May 29, 1991. The witness has informed the Court that at the time of incident he was sitting near Ota (Deri) of temple and on shouts being raised by Kantibhai and the deceased, he had seen that the deceased was caught hold of by the appellant by hair. The witness has firmly stated before the Court that he had seen the appellant inflicting knife blow on the left side chest of the deceased. The witness identified before the Court the knife as well as shirt which was put on by the appellant at the time of the incident. The witness further stated in his deposition

that on shouts being raised by the deceased and his brother Mukesh, Bhalaji Valaji, Prahladji Valaji and Bhikhaji Chhanaji had also arrived at the place of incident and though the appellant had made an attempt to run away all of them had apprehended the appellant and locked him in the shop. According to this witness also on learning about the incident, father of the deceased and others had come to the place of the incident and had removed the deceased in a rickshaw to dispensary. According to this witness, his police statement was recorded at about 4.oo p.m. on the same day. The witness has also deposed that after the incident he had gone to his field and he had learnt at about 11.00 a.m. that the deceased had expired and, therefore, he had gone to Sanand dispensary and had come to the house of the deceased with his dead body.

In cross-examination the witness has admitted that he had not given any information about the incident at Sanand Police Station. The witness admitted that he had not stated in his police statement that he was sitting near the Ota of the temple at the time when the incident had taken place. The witness explained during the course of his cross-examination that his attention was drawn only when shouts were raised by the deceased as well as his brother Mukeshbhai. He also admitted that he had not stated in his police statement that in an attempt to run away, the appellant had fallen down and, therefore, the appellant was apprehended by him and others.

10. On appreciation of evidence of this witness, it becomes clear that he is also an independent witness and is not related to the deceased in any manner whatsoever. This witness has no reason worth the name to implicate the appellant falsely in such a serious case. It was not even suggested that he is on enimical terms with the appellant. The assertion made by the witness during the examination-in-chief that he and others had apprehended the appellant on the spot with blood stained knife and that the appellant was locked in the shop was not challenged during his cross-examination at all. The contention that this witness is a chance witness and, therefore, his testimony should be disbelieved by the Court cannot be accepted. In Rana Pratap and ors. v/s. State of Haryana reported in AIR 1983 S.C. 680 the Supreme Court has explained as to who can be regarded as a chance witness and held as under :-

"In a murder trial by describing the independent witnesses as 'chance witnesses', it cannot be

> implied thereby that their evidence is suspicious and their presence at the scene doubtful. Murders are not committed with previous notice to witnesses; soliciting their presence. If murder is committed in a dwelling house, the inmates of the house are natural witnesses. If murder is committed in a brothel, prostitutes and paramours are natural witnesses. If murder is committed in a street, only passersby will be witnesses. Their evidence cannot be brushed aside or viewed with suspicion on the ground that they are mere 'chance witnesses'. The expression 'chance witnesses' is borrowed from countries where every man's home is considered his castle and every one must have an explanation for his presence elsewhere or in another man's castle. It is a most unsuitable expression in a country whose people are less formal and more casual. To discard the evidence of street hawkers and street vendors on the ground that they are 'chance witnesses', even where murder is committed in a street, is to abandon good sense and take too shallow a view of the evidence."

11. Applying the principle laid down by the Supreme Court to the facts of the present case, we find that witness Gafurbhai Rabari cannot be regarded as a chance witness. It must be remembered that witness Gafurbhai is resident of village Nidhrad itself and his presence at the Dery of Mata in the morning cannot be regarded as unnatural. His evidence establishes that he was knowing the appellant as well as the deceased very well and without any reason he would not implicate the appellant falsely in this case. On overall view of the matter, we are satisfied that the learned Judge has not committed any error in placing reliance on the deposition of this witness. The evidence of Mukeshkumar, who is younger brother of the deceased, gets ample corroboration from the evidence of two independent eye witnesses Bhikhaji Chhanaji P.W. 5 Exh.21 and Gafurbhai Rabari P.W.6 Exh. 22. The evidence of eye witnesses further gets corroboration from the medical evidence which is quite evident from post mortem notes produced on the record of the case at Exh.17 as well as substantive testimony of Dr. Bhardwaj recorded at Exh.15. Dr. Bhardwaj, who had performed autopsy on the dead body of the deceased has clearly stated in his substantive evidence before the Court that on examination he had found knife blows on left side of the chest of deceased, below the left side of shoulder and two blows on his back. Thus, we do not

see any reason as to why the testimony of eye witnesses should be discarded, more particularly when the same is corroborated by medical evidence on record.

12. The fact that the appellant was arrested from the shop is amply borne out from the evidence of Panch witness Patel Govindbhai Laxmichand, who is examined as Prosecution Witness No.4 at Exh.18. This witness in his evidence before the Court has stated that on May 29, 1991 at about 11.30 a.m. he was called at the shop of Kantibhai Bhagvatbhai which was closed from outside. The witness has stated that on opening the shop the appellant was found from the shop with knife and his shirt was also found to be blood stained. The witness has mentioned in his deposition that in his presence the police had arrested the appellant and attached blood stained knife as well as blood stained shirt , which was put on by the appellant at that time. In his cross-examination the witness denied the suggestion made on behalf of the appellant that the appellant was not arrested with knife which was blood stained and that his shirt was also not blood stained. The evidence of this witness gets ample corroboration from the contents of panchnama which is a contemporary document as well as evidence of Investigating Officer, namely Ayubkhan Yakubkhan Pathan. Mr. Pathan has stated in his deposition that he was entrusted the investigation of the case by Police Inspector Mr. U.N. Malvi as Mr. Malvi was required to attend Sessions Court, Ahmedabad (Rural) at Mirzapur further investigation was entrusted to him. According to him, on learning that the appellant was locked in the shop, he had gone to the shop and had arrested the appellant from the shop in presence of panch witnesses. This witness has also stated that the blood stained knife found from the appellant an his blood stained shirt were attached under a panchnama. We may mention that this incriminating circumstance is not explained by the appellant in his further statement, which was recorded u/S. 313 of the Code of Criminal Procedure, 1973.

13. As observed earlier, the incriminating articles attached during the course of investigation were sent to forensic science laboratory for analysis. The report of the forensic science laboratory produced on the record of the case at Exh. 28 indicates that the blood group of the deceased was "B" and the same blood group was found on the shirt of the appellant, which was attached by the Investigating Officer Mr. Pathan in the presence of panch witnesses. This incriminating circumstance was also put to the appellant by the learned Judge, but the appellant did not offer any explanation as to how the

same blood group as that of the deceased was found on his shirt put on by him and which was attached at the time of his arrest. Discovery of blood of same group on the shirt of the appellant indicates that the appellant was in close proximity of the deceased when deceased was fatally wounded and had all opporotunity to commit the crime in question. The evidence and more particularly the arrest Panchnama of the appellant shows that at the time of his arrest, it was found that he had sustained some minor injuries. Eye witness Mukeshkumar, who is real brother of the deceased has stated in his testimony before the Court that his brother had told him that he had beaten the appellant on previous night. The evidence of Investigating Officer Mr. Pathan would indicate that after arrest, the appellant had filed a complaint against the deceased for the offence punishable under Sections 323, 504 as well as Section 135 of the Bombay Police Act on May 29, 1991, which was registered as II C.R. No.107/1991 and that after investigation the Investigating Officer had prayed the Court to grant appropriate summary. The lodging of the complaint by the appellant is also an incriminating circumstance and establishes motive for the commission of the crime in question. On reappreciation of evidence led by the prosecution, we are satisfied that it is proved beyond reasonable doubt that the appellant had committed murder of the deceased by inflicting knife blows and that the learned Judge did not commit any error in convicting the appellant for murder of the deceased. The medical evidence on record establishes that the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause his death and, therefore, no exception can be taken to the finding recorded by the learned Judge that the appellant committed an offence which is punishable under Section 302 of the Indian Penal Code.

14. For the foregoing reasons, we do not find any substance in the appeal and the appeal is liable to be dismissed.

The appeal therefore fails and is dismissed. Muddamal articles to be disposed of in terms of direction given by the learned Judge in the impugned judgment.

[J.M. PANCHAL, J.]

[AKSHAY H. MEHTA, J.]

* Pansala.